

ABSTRACT

The concept and legal consequence of the excessive use of self-defence and necessity

A principal theme of this diploma thesis is the institute of necessity and self-defence – two circumstances precluding wrongfulness which represent the essential criminal law means enabling citizens through the conduct to protect their and third parties' interest should their rights be endangered. It is not within the power of the state to efficiently defend citizens from all danger and attacks which are aimed against them and, therefore, the institute of necessity and self-defence plays a significant and exceptional role in the society. The Criminal Code provides within the meaning of Sections 28 and 29 the protection only to those who - while averting a directly imminent danger or a directly imminent or pending attack against the interest protected by the Criminal Code - satisfy the statutory requirements. Only such conduct is lawful, beneficial to the society and does not involve the illegality as attribute of crime. By establishing the statutory conditions of the conduct satisfying necessity and self-defence the legislature expressed that the state of danger does not enable discretion on the part of a defender and the rights of an attacker needs, to a certain extent, be preserved. The ramification of a breach of the limits of necessity or self-defence is liability for crime, the attributes of which were met by the particular conduct. The fact that the crime was committed in averting a danger or an attack resulting from a breach of the statutory limits of these institutes constitutes the grounds for a special process in imposition of sanctions on an offender.

The objective of this diploma thesis is to examine in a comprehensive manner the present law concerning the institute of necessity and self-defence, show conflicting issues of these institutes and variable approaches of individual legal scholars towards their resolution. This diploma thesis contains an analysis of the existing law and also presents opinions of the author concerning certain problematic questions and normative law proposals. The author devotes close attention to judicature throughout the diploma thesis.

The diploma thesis consists of five parts structured into sub-chapters. The first part generally examines the illegality and circumstances precluding wrongfulness which facilitates better comprehension of a further content of the thesis. The institute of necessity is analyzed in the second part, where the author concentrates on the substance and purpose of necessity

and its individual conditions, in particular events of the so-called excess, i.e., the failure of a defender in averting danger to satisfy all statutory requirements and the resulting breach of the limits of the legal conduct in necessity. The third and most voluminous part hereof is dedicated to the institute of self-defence. While the second and third parts hereof are identical from the perspective of a systemic analysis, the treatise concerning self-defence highlights a frequently publicly debated issue of property protection and, in addition, includes chapters Arrest of Person Suspected of Commitment of Crime and Conduct of Persons Not Criminally Liable. The fourth part covers both institutes and examines the ramifications of a breach of the limits of necessity and self-defence. In its prelude, the author shades light on the need, societal and legal importance of the reflection of the excess in imposition of sanctions on persons who breach the limits of necessity and self-defence and also highlights issues of a legal qualification of the conduct in the event of a split form of scienter relating to the breach of the said limits and its implications. Further sub-chapters contain the examination of particular legal ramifications of a breach of the limits of necessity and self-defence. In final chapter of this diploma thesis, the author deals with the permission of automatic defense systems, the most frequently made objections, which challenge their use, and danger and risks to be addressed by a defender in installing the automatic defense systems. In light of the extent of this diploma thesis, the author did not elaborate a historic development of the individual institutes and a comparison of Czech and foreign law. In preparing this thesis, the author used a method of analogy, analysis, synthesis, induction and deduction. This diploma thesis reflects law valid and in effect as of January 20, 2014.